

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**VEHICLE MARKET RESEARCH,** )  
**INC.,** )  
 )  
 **Plaintiff,** )  
 )  
 **vs.** )  
 )  
**MITCHELL INTERNATIONAL, INC.,** )  
 )  
 **Defendant.** )  
\_\_\_\_\_ )

**Case No. 09-2518-JAR**

**MEMORANDUM AND ORDER**

Before the Court are Defendant Mitchell International, Inc.’s Motion for Jury Instruction Concerning TLSS Product Prototype (Doc. 214), and Motion for Mistrial as a Result of Factually Inaccurate Statements Made by VMR During Closing Argument Regarding the TLSS Prototype (Doc. 215). These motions concern statements made by VMR’s counsel during his rebuttal closing argument suggesting that Mitchell possesses the TLSS prototype discussed during the trial, and that Mitchell did not return the prototype to VMR. Mitchell contends that these statements misrepresent the fact that VMR does possess the prototype, citing deposition testimony from VMR’s sole shareholder, Pete Tagliapietra, admitting that he has reviewed the prototype during the pendency of this litigation. Defense counsel did not object to the statements contemporaneously during the closing argument. Nor did defense counsel object at the conclusion of the closing argument, before the Court proceeded to read the final instructions to the jury. He waited until the case had been submitted to the jury and raised the issue with the Court, requesting a supplemental jury instruction to clarify that VMR has in fact had a copy of the TLSS Product Prototype since 1998. Defendant filed its motion in writing the following day.

The Court denies Mitchell's motion for a supplemental jury instruction as untimely. Mitchell could have raised this issue through a contemporaneous objection, which would have given the Court the opportunity to instruct the jury before it began deliberating.<sup>1</sup> The Court offered to submit a stipulation to the jury during its deliberations, that the parties each possess a copy of the prototype. Neither party was amenable to this proposal.

The Court takes Mitchell's motion for mistrial under advisement pending the jury verdict.

Dated: September 9, 2015

S/ Julie A. Robinson  
JULIE A. ROBINSON  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup>See Fed. R. Civ. P. 51(c)(2)(B); Fed. R. Evid. 103(a).